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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,067	10/14/2003	Gordon L. Brown JR.	30922-2	4373

7590 02/22/2008
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P.O. Box 10107
Greenville, SC 29603

EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/685,067

Applicant(s)

BROWN, GORDON L.

Examiner

Jerome W. Donnelly

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on RCE 4/23/07
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) 1-15 is/are objected to.
- 8) ☐ Claim(s) 1-15 are subject to restriction and/or election requirement.

Application Papers

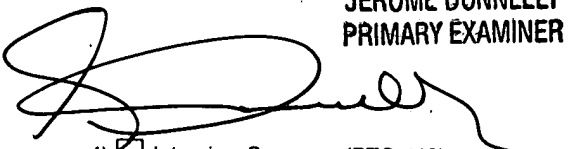
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. .
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other:

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In response to the applicants arguments directed towards the device being manufactured of theroplastic the examiner considers the fiberglass disclose by the device of Brown as being a theroplastic resin. The fact that the device of Brown includes fibrous material does not preclude the material of which Brown is manufactured of as being a thermoplastic fiberglass. Resinous materials are also theroplastics. The examiner also considers the fiberglass disclosed by Brown as a function equivalent to applicants claimed thermoplastic tube member unless the applicant can convincingly prove significant bend characteristic differences in the material in the environment of bendable tube members in this art.

In regard to applicants claims of a major and miner axis note the cross section of Brown Jr.

As to the rod orienting itself, the examiner reminds the applicant that, applicant's claims of orientation is so broad so as to reach on any movement of the rod with the tube. As shown by Brown fig. 4 the device of Brown is bendable in response to forces exerted by the interior of the tube.

Claim 19 and 20 are allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach.

Brown discloses the device of claims 1-9 substantially as claimed absent the device having a round cavity.

Benach however teaches providing round cavities in round plastic (theroplastic) tubes wherein the device is used to exercise, said device being bendable and having closures in the form of handles.

Given the above teaching of Benach of including round cavities, the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the cavity of Brown of a round shape as one of several shapes known in the manufacture of tubing material.

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach and further in view of Truchelut.

The examiner notes that it would have been obvious to one of ordinary skill in the art to provide padding on the device of Brown for the purpose of allowing the user to place his device against the body and to enhance user comfort in view of Truchelut.

In regard to claim 15 the examiner notes that it would have been obvious to manufacture the rod of Brown of a pultrusion process. See Col. 8 line 37.

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Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach and further in view of Cho.

In regard to claims 11-13 the examiner notes that to provide at least three rods members verses one rod member is obvious for the purpose of providing additional resistance to the device of Brown modified in view of Cho fig. 2.

In regard to claim 14 the claimed functionality of the device of inherently causes an applied pressure to the edges of the rod.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the device of Boggild et al Fig. 7, 3246893.

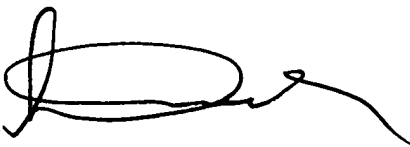
Note the overall device of Bodman.

Note the overall device of Ferdinand 3510130.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571)272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'Jerome Donnelly', written over the printed name and title.